

**Petition For Revival Of An Application For Patent Abandoned  
Unintentionally Under 37 CFR 1.137(b) (Large Entity)**

Docket No.  
**RSW920010209US1 - 25**

In Re Application Of: **John S. Cox, et al**

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
<b>10/026,384</b>	<b>12/21/2001</b>	<b>Hal D. Wachsman</b>	<b>46320</b>	<b>2857</b>	<b>1002</b>

Invention: **SCENARIO BASED TESTING ANDLOAD GENERATION FOR WEB APPLICATIONS**

Attention: Office of Petitions  
**Mail Stop Petition**  
**COMMISSIONER FOR PATENTS**  
P.O. Box 1450  
Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper response to a notice or action by the Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extension of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee--required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. ☐ A proposed reply to the above-identified notice or action:

☐ is enclosed. ☒ was filed on June 30, 2005

The proposed reply is in the form of: \_\_\_\_\_

2. ☐ The issue fee:

☐ is enclosed. ☐ was paid on \_\_\_\_\_

3. ☐ The abandoned application was a:

☐ design application. ☒ utility application. ☐ plant application.

4. ☐ A terminal disclaimer (and fee) disclaiming a period equivalent to the period of abandonment is enclosed.

5. ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

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10/026,384	12/21/2001	Hal D. Wachsman	46320	2857	1002

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**Calculation and Payment of Fees**

Enclosed are the following fees:

- |  |                             |
|--|-----------------------------|
| 6. <input checked="" type="checkbox"/> Petition fee under 37 CFR 1.17(m) in the amount of: | <u>\$1,500.00</u>           |
| 7. <input type="checkbox"/> Fee for reply in the amount of:                                | <u>                    </u> |
| 8. <input type="checkbox"/> Issue fee in the amount of:                                    | <u>                    </u> |
| 9. <input type="checkbox"/> Continuing application filing fee in the amount of:            | <u>                    </u> |
| 10. <input type="checkbox"/> Terminal disclaimer fee in the amount of:                     | <u>                    </u> |
| 11. <input type="checkbox"/> _____   | <u>                    </u> |
| Total fees enclosed:   | <u>\$1,500.00</u>           |

The fee of **\$1,500** is to be paid as follows:

- ☐ A check in the amount of the fee is enclosed.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. **09-0461**
- ☐ Payment by credit card. Form PTO-2038 is attached.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

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**Statement**

The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), Subsections (III)(C) and (D)).]

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioner/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.



*Signature*

**Steven M. Greenberg  
Carey, Rodriguez, Greenberg & Paul, LLP  
1300 Corporate Center Way, Suite 105 G  
Wellington, FL 33414  
CUSTOMER NUMBER 46320**

**Dated: July 10, 2006**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on

*(Date)*

*Signature of Person Mailing Correspondence*

*Typed or Printed Name of Person Mailing Correspondence*

CC:



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

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**COPY MAILED**

**JUN 23 2006**

**OFFICE OF PETITIONS**

In re Application of	:	
Cox et al.	:	
Application No. 10/026,384	:	
Filed: December 21, 2001	:	DECISION ON
For: SCENARIO BASED TESTING AND LOAD	:	PETITION
GENERATION FOR WEB APPLICATIONS	:	

This is a decision in response to the Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181, filed June 30, 2005. The delay in treating this petition is regretted.

This Petition is hereby dismissed.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly respond to the final Office action, mailed January 5, 2004. The Notice set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a).

Applicant filed an Amendment in response to the Office action on March 8, 2004. The response was mis-placed by the Office. Applicant was so notified in a Notice Under 37 CFR 1.251, mailed April 18, 2005.

Applicant filed a copy of the previously-filed Amendment that included a Certificate of Mailing under 37 CFR 1.8, along with a copy of a Return-Receipt postcard evidencing receipt by this Office

of the Amendment on March 11, 2004 (Certificate of Mailing dated March 8, 2004).

The Amendment failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action, mailed June 6, 2005.

No timely and proper response having been received, the application became abandoned on July 6, 2004. A Notice of Abandonment was mailed June 6, 2005.

Petition under 37 CFR 1.181

Applicant files the instant petition and asserts that the Notice Under 37 CFR 1.251 is an action within the meaning of 35 U.S.C. 133, such that an Applicant was given an extendable period of up to six months to respond to the Notice Under 37 CFR 1.251.

Applicant is advised that the application became abandoned for failure to timely and proper reply to the final Office action<sup>1</sup>, and not for failure to timely reply to the Notice Under 37 CFR 1.251.

Applicant is further advised that the mechanism for replacing time that Applicants have lost resulting from the Patent Office misplacing applicant's paperwork is the Patent Term Adjustment.

Alternative venue

Applicant is strongly urged to file a petition stating that the delay was unintentional. An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee, currently \$750.00.

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<sup>1</sup> 35 U.S.C. § 133 provides that "[u]pon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable. (Emphasis supplied).

37 CFR § 1.135. provides:

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

By FAX: (571) 273-8300  
Attn: Office of Petitions

By hand: Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

  
Derek L. Woods

Attorney  
Office of Petitions